

Remarks

Applicant respectfully requests reconsideration of the present application in light of the foregoing amendments and following remarks.

Claims 4-10, 13-15, and 18-26 remain pending. Claims 1-3, 11, 12, 16, and 17 were previously cancelled. Claims 4, 5, 7, 8, 21, and 24-26 are independent.

Claims 5, 7, 24, and 26 are amended. No new matter is added.

Claims 4-10, 13-15, and 18-26 are rejected. These rejections are respectfully traversed.

Request for Examiner Interview if Any Issues Remain

If any issues remain after entry of the present Amendment, Applicant formally requests that the Examiner contact the undersigned attorney *prior to issuance of the next Office Action* to arrange a telephonic interview pursuant to MPEP § 713.01.

Lengthy Prosecution

Applicant notes that the present Office Action is the *sixth Action on the merits* in this case, *all of which have been non-final Actions*. Also, there have been claim amendments in only two of the previously filed responses to the Office Actions. In light of USPTO Director Kappos's objective that patent prosecution be *efficient and compact*, it is hoped that entry of the present Amendment can be used to help bring prosecution of the present application to an expeditious end.

As Noted in the Previous Response, McGuire is Disqualified from Being Used as a Prior Art Reference for 35 U.S.C. § 103(a) Rejections

As noted in the Response to Office Action filed on February 24, 2010 (the "Prior Response"), 35 U.S.C. § 103(c) provides that "[s]ubject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

As set out in the Statement of Common Ownership presented in the Prior Response, and reiterated in the attached Appendix, the present application and U.S. Patent No. 6,996,615 to

McGuire (“McGuire”) were both owned by the same entity at the time the invention of the present application was made. In particular, both the present application and McGuire were owned by, or were subject to an obligation of assignment to, Cisco Technology, Inc. at the time the invention of the present application was made. Furthermore, McGuire does not qualify as prior art under any of subsections (a) through (d) of 35 U.S.C. § 102 because the August 20, 2003, filing date of the present application precedes the earliest publication date of McGuire, which is the February 7, 2006, issue date thereof.

Consequently, McGuire is disqualified from being used as a prior art reference for 35 U.S.C. § 103(a) rejections pursuant to MPEP 706.02(l)(1)-(3).

The Rejections of Claims 24-26 Should be Withdrawn Because McGuire is Disqualified from Being Used as a Prior Art Reference for 35 U.S.C. § 103(a) Rejections

The Office Action (“Action”) rejects independent claims 24-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,603,774 to Knappe (“Knappe”) in view of U.S. Patent No. 7,099,301 to Sheu (“Sheu”) and U.S. Patent No. 6,535,505 to Hwang (“Hwang”) and further in view of McGuire. Applicant traverses these rejections.

As noted in the Prior Response and reiterated above, McGuire is disqualified from being used as a prior art reference for 35 U.S.C. § 103(a) rejections because (1) the present application and McGuire were both owned by the same entity at the time the invention of the present application was made and (2) McGuire does not qualify as prior art under any of subsections (a) through (d) of section 102.

Accordingly, the 35 U.S.C. § 103(a) rejections of independent claims 24-26 should be withdrawn and such action is respectfully requested.

Furthermore, because any new rejection of any of claims 24-26 in the next Action would constitute “a new ground of rejection that is neither necessitated by applicant’s amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 C.F.R. 1.97(c),” *such Action should not be made final, see MPEP 706.07(a).*

*Claims 4-10, 13-15, and 18-23 are Patentable over Knappe, Sheu, and Hwang
under 35 U.S.C. § 103*

The Action rejects claims 4-10, 13-15, and 18-23 under 35 U.S.C. § 103(a) as being unpatentable over Knappe in view of Sheu and further in view of Hwang. Applicant traverses these rejections.

Claim 4

Independent claim 4 is directed to a system for allocating a plurality of DSPs to handle calls in a voice gateway, said calls utilizing a plurality of different codecs, said codecs requiring a plurality of different amounts of DSP resources, and recites the following features:

means for first determining if the call can be assigned to a DSP on a best fit basis utilizing a best fit pool which indicates the DSPs that would be fully loaded by a call using a codec in the associated resource group; and
means, operable if a call can not be assigned on a best fit basis, for assigning the call to a DSP utilizing a load balancing pool which indicates the number of calls on each DSP.

Knappe does not teach or suggest “means for first determining if the call can be assigned to a DSP on a best fit basis utilizing a best fit pool which indicates the DSPs that would be fully loaded by a call using a codec in the associated resource group” and “means, operable if a call can not be assigned on a best fit basis, for assigning the call to a DSP utilizing a load balancing pool which indicates the number of calls on each DSP,” as recited in independent claim 1. For example, as noted at page 17 of the Amendment filed on July 2, 2008, Knappe does not teach or suggest any resource allocation among a plurality of DSPs; rather, Knappe describes a system for selecting common codecs in order to establish a connection between two different telephony systems, *see, e.g.*, col. 3, lines 7-15 and 47-65. Indeed, Knappe’s “best fit” is not used for specific DSP resource allocation but for assigning a codec on a “best known quality pairing” so that two different telephony systems may connect over a packet-based telephony network. In other words, Knappe describes a system for *assigning similar codecs between two calls* and not *allocating a single call to a DSP with just enough resources available to handle the particular call*.

Furthermore, Applicant reminds the Examiner that, even if Knappe’s “best fit” were comparable to the “best fit” recited in the claim (which it is not), Knappe’s implementation of its “best fit” is entirely different from that of the “best fit” recited in the claims. The language of

claim 1 indicates that the recited method does not involve an alternate resource allocation method unless there is no best fit for an incoming call as per the call's resource requirements and any first channel penalty the call may have. In contrast, Knappe's "best fit" is not used as part of any *primary, initial step of DSP resource allocation*; rather, it is used as a *secondary method for establishing a codec between two separate calls in a telephony system*, *see, e.g.*, col. 3, lines 47-65 (as noted at page 2 of the Action). In fact, Knappe's "best fit" is merely an alternative option if the codec proxy system 24 (as shown in Fig. 1) is first unable to find a common codec between two different telephony systems because one does not exist. If there is no common codec, the codec proxy system will fall back on a codec request that best fits the user codec profile, wherein "best fit" is merely described as "best quality; lowest bandwidth, etc.," *see* col. 3, lines 49-53.

In addition, Applicant notes that the Examiner previously acknowledged that "Knappe does not teach means for first determining if the call can be assigned to a DSP on a best fit basis utilizing a best fit pool which indicates the DSPs that would be fully loaded by a call using a codec in the associated resource group; if a call can not be assigned on a best fit basis, for assigning the call to a DSP utilizing a load balancing pool, which indicates the number of calls on each DSP," *see* Office Action mailed November 13, 2008, at page 5.

Sheu and Hwang fail to cure the deficiencies of Knappe. For example, neither reference teaches or suggests anything pertaining to a best fit pool, let alone "means for first determining if the call can be assigned to a DSP on a best fit basis utilizing a best fit pool which indicates the DSPs that would be fully loaded by a call using a codec in the associated resource group." Also, neither reference teaches or suggests a load balancing pool that indicates the number of calls on each DSP, let alone "means, operable if a call can not be assigned on a best fit basis, for assigning the call to a DSP utilizing a load balancing pool which indicates the number of calls on each DSP."

Because the combination of Knappe, Sheu, and Hwang does not teach each and every element recited in independent claim 4, the 35 U.S.C. § 103(a) rejection of independent claim 4 should be withdrawn and such action is respectfully requested.

Claim 5

Independent claim 5 is directed to a method of allocating a plurality of resources to handle tasks, said tasks utilizing a plurality of different amounts of resources, and recites the following features:

first determining if a task can be assigned to a resource on a best fit basis utilizing a best fit pool which indicates the resources that would be substantially fully loaded by a task in an associated resource group, the codecs in each resource group requiring substantially the same amount of resources; and
if a task can not be assigned on a best fit basis, assigning the task to a resource utilizing a load balancing pool which indicates the number of tasks assigned to each resource.

As discussed above, Knappe does not teach or suggest first determining if a particular call can be assigned to a resource on a best fit basis; rather, Knappe describes a system for *assigning similar codecs between two calls*. Therefore, Knappe does not teach or suggest at least “first determining if a task can be assigned to a resource on a best fit basis utilizing a best fit pool which indicates the resources that would be substantially fully loaded by a task in an associated resource group, the codecs in each resource group requiring substantially the same amount of resources,” as recited in independent claim 5.

Furthermore, Applicant again notes that, even if Knappe’s “best fit” were comparable to the “best fit” recited in the claim (which it is not), Knappe’s implementation of its “best fit” is entirely different from that of the “best fit” recited in the claims. In particular, Knappe’s “best fit” is not used as part of any *primary, initial step of resource allocation*; rather, it is used as a *secondary method for establishing a codec between two separate calls in a telephony system*. Accordingly, Knappe does not teach or suggest at least “if a task can not be assigned on a best fit basis, assigning the task to a resource utilizing a load balancing pool which indicates the number of tasks assigned to each resource,” as recited in independent claim 5.

In addition, Applicant notes that the Examiner previously acknowledged that “Knappe does not teach first determining if a task can be assigned to a resource on a best fit basis utilizing a best fit pool which indicates the resources that would be substantially fully loaded by a task in the associated resource group; if a task can not be assigned on a best fit basis, assigning the task to a resource utilizing a load balancing pool, which indicates the number of tasks, assigned to each resource,” *see* Office Action mailed November 13, 2008, at page 6.

Sheu and Hwang fail to cure the deficiencies of Knappe. For example, neither reference teaches or suggests anything pertaining to a best fit pool, let alone “first determining if a task can be assigned to a resource on a best fit basis utilizing a best fit pool which indicates the resources that would be substantially fully loaded by a task in an associated resource group, the codecs in each resource group requiring substantially the same amount of resources.” Also, neither reference teaches or suggests a load balancing pool that indicates the number of tasks assigned to each resource, let alone “if a task can not be assigned on a best fit basis, assigning the task to a resource utilizing a load balancing pool which indicates the number of tasks assigned to each resource.”

Because the combination of Knappe, Sheu, and Hwang does not teach each and every feature recited in independent claim 5, the 35 U.S.C. § 103(a) rejection of independent claim 5 should be withdrawn and such action is respectfully requested.

Claim 6

Dependent claim 6 depends from independent claim 26 and is allowable for at least the same reasons that pertain to the parent claim 26. Dependent claim 6 is also independently patentable. Accordingly, the 35 U.S.C. § 103(a) rejection of dependent claim 6 should be withdrawn and such action is respectfully requested.

Claims 7 and 19

Independent claim 7 is directed to a method of allocating tasks to a plurality of DSPs to handle calls in a voice gateway that receives calls, said calls utilizing a plurality of different codecs, at least some of said codecs requiring different amounts of DSP resources, and recites the following features:

- establishing a best fit pool which has a number of codec resource groups, the codecs in each codec resource group utilizing the same amount of DSP resource, and for each particular resource group indicating which DSPs would be fully loaded if they were assigned a call using a codec in the particular resource group;
- establishing a load balancing pool that has a number of call load groups, the DSPs in each call load group handling a same number of calls;
- first determining if a particular call can be assigned to a DSP based on the information in the best fit pool; and
- if a call can not be assigned on a best fit basis, assigning said particular call on a load balancing basis using the information in said load balancing pool.

As discussed above, Knappe does not teach or suggest first determining if a particular call can be assigned to a DSP on a best fit basis; rather, Knappe describes a system for *assigning similar codecs between two calls*. Accordingly, Knappe does not teach or suggest at least “establishing a best fit pool which has a number of codec resource groups, the codecs in each codec resource group utilizing the same amount of DSP resource, and for each particular resource group indicating which DSPs would be fully loaded if they were assigned a call using a codec in the particular resource group” and “first determining if a particular call can be assigned to a DSP based on the information in the best fit pool,” as recited in independent claim 7.

Furthermore, Applicant again notes that, even if Knappe’s “best fit” were comparable to the “best fit” recited in the claim (which it is not), Knappe’s implementation of its “best fit” is entirely different from that of the “best fit” recited in the claims. In particular, Knappe’s “best fit” is not used as part of any *primary, initial step of resource allocation*; rather, it is used as a *secondary method for establishing a codec between two separate calls in a telephony system*. Accordingly, Knappe does not teach or suggest at least “if a call can not be assigned on a best fit basis, assigning said particular call on a load balancing basis using the information in said load balancing pool,” as recited in independent claim 7.

In addition, Applicant notes that the Examiner previously acknowledged that “Knappe does not teach for each particular resource group indicating which DSPs would be fully loaded, first determining if a particular call can be assigned to a DSP based on the information in the best fit pool; if they were assigned a call using a codec in the particular resource group, establishing a load balancing pool which indicates the number of calls on each codec, and if a call can not be assigned on a best fit basis, assigning said particular call on a load balancing basis using the information in said load balancing pool,” *see* Office Action mailed November 13, 2008, at page 7.

Sheu and Hwang fail to cure the deficiencies of Knappe. For example, neither reference teaches or suggests anything pertaining to a best fit pool, let alone “first determining if a task can be assigned to a resource on a best fit basis utilizing a best fit pool which indicates the resources that would be substantially fully loaded by a task in an associated resource group, the codecs in each resource group requiring substantially the same amount of resources.” Also, neither reference teaches or suggests a load balancing pool that indicates the number of tasks assigned to

each resource, let alone “if a task can not be assigned on a best fit basis, assigning the task to a resource utilizing a load balancing pool which indicates the number of tasks assigned to each resource.”

Because the combination of Knappe, Sheu, and Hwang does not teach each and every feature recited in independent claim 7, the 35 U.S.C. § 103(a) rejection of independent claim 7 should be withdrawn and such action is respectfully requested.

Dependent claim 19 depends from independent claim 7 and is allowable for at least the same reasons that pertain to the parent claim 7. Dependent claim 19 is also independently patentable. Accordingly, the 35 U.S.C. § 103(a) rejection of dependent claim 19 should be withdrawn and such action is respectfully requested.

Claims 8 and 20

Independent claim 8 recites features that are similar to those recited in independent claim 7 and, therefore, claim 8 should be allowed for at least the same reasons that pertain to claim 7. Accordingly, the 35 U.S.C. § 103(a) rejection of independent claim 8 should be withdrawn and such action is respectfully requested.

Dependent claim 20 depends from independent claim 8 and is allowable for at least the same reasons that pertain to the parent claim 8. Dependent claim 20 is also independently patentable. Accordingly, the 35 U.S.C. § 103(a) rejection of dependent claim 20 should be withdrawn and such action is respectfully requested.

Claims 9, 10, and 13

Dependent claims 9, 10, and 13 depend directly or indirectly from independent claim 24 and are allowable for at least the same reasons that pertain to the parent claim 24. Dependent claims 9, 10, and 13 are also independently patentable. Accordingly, the 35 U.S.C. § 103(a) rejections of dependent claims 9, 10, and 13 should be withdrawn and such action is respectfully requested.

Claims 14, 15, and 18

Dependent claims 14, 15, and 18 depend directly or indirectly from independent claim 25 and are allowable for at least the same reasons that pertain to the parent claim 25. Dependent

claims 14, 15, and 18 are also independently patentable. Accordingly, the 35 U.S.C. § 103(a) rejections of dependent claims 14, 15, and 18 should be withdrawn and such action is respectfully requested.

Claims 21-23

Independent claim 21 recites features that are similar to those recited in independent claim 26 and, therefore, claim 21 should be allowed for at least the same reasons that pertain to claim 26. Accordingly, the 35 U.S.C. § 103(a) rejection of independent claim 21 should be withdrawn and such action is respectfully requested.

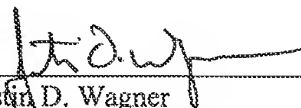
Dependent claims 22 and 23 depend directly or indirectly from independent claim 21 and are allowable for at least the same reasons that pertain to the parent claim 21. Dependent claims 22 and 23 are also independently patentable. Accordingly, the 35 U.S.C. § 103(a) rejections of dependent claims 22 and 23 should be withdrawn and such action is respectfully requested.

Conclusion

Applicant submits that the present application is in condition for allowance and such action is respectfully requested.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.


Justin D. Wagner
Reg. No. 54,519

210 SW Morrison Street, Suite 400
Portland, OR 97204
503-222-3613
Customer No. 20575

Appendix – Statement of Common Ownership

The present application was filed after November 29, 1999.

Applicant's representative is an attorney of record in this case.

The present application and U.S. Patent No. 6,996,615 to McGuire were both owned by, or were subject to an obligation of assignment to, Cisco Technology, Inc. at the time the invention of the present application was made.